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must be calculated to frighten ordinarily gentle and well trained horses. *Poilet v. Simmons*, 106 Pa. St. 95. Still other courts hold that it is not an actionable defect unless the traveler actually comes into contact with the object. *Cook v. Charlestown*, 98 Mass. 80; *contra: Bartlett v. Hoockett*, 48 N. H. 18.

HOMICIDE—DUTY TO RETREAT.—*MILLER v. STATE*, 119 N. W. 850 (Wis.).—*Held*, that the common law rule as to the duty of one attacked to "retreat to the wall" or so far as he can, or so far that to go further would rather increase than decrease the danger, is no longer the law.

The doctrine of "retreat to the wall" had its origin before the general introduction of fire-arms and to-day seems to be considered obsolete or loosely construed in the majority of states. The idea of retreat is lost in the greater question, did the defendant, when assaulted, believe or have reason to believe that the use of a deadly weapon was necessary to his own safety. *Runyan v. State*, 57 Ind. 80; *Philips v. Commonwealth*, 63 Ky. (2 Duv.) 328. Even where the courts are more strict in their application of this rule, the suddenness of the attack, the peril of exposing the person during flight, of endangering a third party, and the fact that those in a position of peril are not called upon to weigh with a nicety the question of what is the proper line of action, is taken into consideration. *People v. Fiori*, 108 N. Y. S. 416; *People v. Macard*, 73 Mich. 15; *People v. Harper*, 2 Wheeler Cr. Cas. 347. At variance with the more general modern tendency is the old common law rule that no one is excused for taking human life if with safety to his own person he could have retired from the combat. This more peaceable view is still held in many jurisdictions. *State v. Honey*, 65 Atl. 764 (Del.); *People v. Mallon*, 189 N. Y. 520; *State v. Kennedy*, 91 N. C. 572.

HOMICIDE—UNLAWFUL ARREST—RIGHT TO RESIST.—*PERDUE v. STATE*, 63 S. E. 922 (Ga.).—*Held*, that a citizen whom it is attempted unlawfully to arrest has a right to resist force with force proportionate to that being used to arrest him; and if, in the exercise of such right of resistance, he kills an officer who is unlawfully attempting to arrest him he is guilty of no offense. *Powell, J., dissenting.*

A large number of jurisdictions hold with the above case, that no crime is committed in the killing of an officer while resisting unlawful arrest. *Simmerman v. State*, 14 Nebr. 568; *State v. Oliver*, 2 Houst. (Del.) 585; *Starr v. U. S.*, 153 U. S. 614. Other courts hold that there must be danger of bodily harm to the defendant before the killing of a person attempting to make an illegal arrest becomes justifiable. *State v. Row*, 81 Iowa 138; *Bowling v. Commonwealth*, 7 Ky. L. Rep. 821; *State v. Cantieny*, 34 Minn. 1. In *Williams v. State*, 44 Ala. 41, it is held that it is the duty of a person to submit to the illegal arrest and seek redress at law. On the other hand the English courts and those in some American jurisdictions hold that when a police officer is slain while attempting to make an unlawful arrest, the offense is reduced from murder to man-